

Standard Operating Procedures for Processing UIC Program Revision Submittals

Introduction

This document contains standard operating procedures (SOPs) for the evaluation and approval/disapproval of state applications for §1422 and/or §1425 program revision(s).

These SOPs will facilitate and help streamline the review and approval process by identifying the responsibilities of Office of Ground Water and Drinking Water (OGWDW) and Regional staff. These SOPs build upon and tailor the program revision review process, but do not supersede or replace previous OGWDW guidance, e.g., Guidance for Review and Approval of State Underground Injection Control (UIC) Programs and Revisions to Approved State Programs (Guidance #34).

Program revision reviews will be carried out by a review team of OGWDW and regional staff. Through this team approach, OGWDW staff will support the Regions if needed or requested, while allowing the Regions to take the lead on their delegated responsibilities related to reviewing primacy program revisions.

Organization

This SOP document is divided into the four general phases of the program revision application review process:

- **Phase I: Pre-Application Activities** to help the states develop program revisions that meet all of the requirements for these submittals, including completing a crosswalk of the state's UIC regulations.
- **Phase II: Receive Application and Determine Completeness**, includes the completeness review, preparation of a *Federal Register* Notice of Completeness, and creation of a docket.
- **Phase III: Review and Evaluate for Approval**, includes activities during and after the 30-day comment period (e.g., program revision review, public hearings, and reviewing public comments).
- **Phase IV: Tier III Rulemaking and Codification in 40 CFR Part 147**, e.g., preparing rule text, creating a rulemaking docket, and the final rulemaking process and codification of state regulations in Part 147.

EPA has developed materials and resources (e.g., templates of common documents) that are available to the Regions and states to assist them in developing, reviewing, and implementing an enforceable UIC program.

Phase I: Pre-Application Activities

When a state notifies the Region of its intention to submit a program revision, a review team will be created consisting of an OGWDW and a Regional lead (i.e., the “review team”). The review team will work together to identify and resolve problems with the state’s program revision application before it is submitted. Once a state indicates interest in applying for a program revision:

- The Region notifies OGWDW of the state’s interest.
- OGWDW and Regional staff form a review team.
- OGWDW begins to enter key information on the status of the state’s program revision application into a tracking system (e.g., who will review the program revision application and major milestones in the review process).

EPA plans to engage the states as early as possible in the process. Prior to a state’s formal application submittal:

- The review team should work with state leads as they develop their program revision applications, including reviewing draft materials and answering questions.
- The review team should encourage states to prepare a cross-walk of their UIC regulations against the federal UIC regulations before formally submitting the program revision. Crosswalk templates for §1422 and §1425 program revisions are available. Taking this step early in the process will help the program revision review team identify any significant issues that may delay or prevent approval of the program revision.
- The review team should discuss with the state the scope of the program changes (i.e., entire §1422 program, a specific well class, or other program revisions). For example, have any state statutory or regulatory changes been made since the last approval date codified in 40 CFR Part 147 that have not been submitted to EPA for review and approval as either non-substantial or substantial revisions?
- Regions should work with states to identify which elements of their program need to be revised to meet the requirements of 40 CFR Part 145.32(b); see Box 1.

Box 1 presents the elements of a program revision submission per 40 CFR Part 145.32(b)(1).

Box 1: Elements of a Program Revision Submission [40 CFR Part 145.32(b)(1)]

1. **Modified Program Description** (including organizational charts, applicable state procedures, permit forms, Memoranda of Understanding, etc. addressing any changes to the state's UIC program).
2. Updated **Attorney General's Statement** regarding adequate authority to carry out the program.
3. Revised **Memorandum of Agreement** with the Regional Administrator setting out the new provisions and arrangements between the state and EPA concerning the state's program revision.
4. Copies of all applicable **state statutes and regulations**, including those governing state administrative procedures.
5. **Letter from the Governor of the State** requesting program approval, if applicable.

Phase II: Receive Application and Determine Completeness (30 days)

States may submit a program revision application by mail or e-mail to their Regional contact.

Completeness Review

After receiving a program revision application, the review team will make a determination regarding the completeness of the application.

- The review team reviews the application for completeness and holds conference calls to discuss it.
- The review team works together to address any outstanding issues.
- Regions document the final determination as to whether the state's program revision is complete and notify the state of this determination.

A complete package must, at a minimum, contain all of the applicable elements in Box 1. If a program revision application is not complete (i.e., if all of the pieces are not present), the Region will request additional information from the state before proceeding with the review. However, the review team should work with the state (even before the application is submitted) so that they submit an application that will eventually be approvable. It will be necessary to strike a balance between a minimally complete and a "perfect" submittal to avoid delays in submitting the state's application.

Federal Register Notice of Completeness and Solicitation of Public Comment

Once the application is determined to be complete, the Region drafts and publishes public notice of completeness in the **Federal Register** and in newspapers [40 CFR Part 145.32(b)(2)]. For program revisions, the **Federal Register** Notice is also referred to as a "Notice of Receipt of Program Revision." The Regional Administrator signs the notice. The notice will include:

- Notice that the state's program revision is complete.
- How to obtain a copy of the program revision (e.g., docket ID, Regional or OGWDW contact person).
- Solicitation of public comment (for at least 30 days).
- Instructions for requesting a public hearing.

A template of a **Federal Register** Notice of Completeness with "blanks" for Regions to add public hearing information and instructions for submitting public comments, etc., is available. Note that the **Federal Register** office uses Word 2003 software; writers of notices should be sure to save files as .doc (and not .docx) files to avoid publication delays.

If multiple states within a Region apply for a program revision at or near the same time, the Region can combine the Notices of Completeness for the states together in one ***Federal Register*** notice. Decisions regarding combining notices will be case-specific (i.e., only when multiple notices are ready for publication within a few days of each other), so that no reviews are delayed.

Create Docket

OGWDW will create a docket for each program revision in preparation for eventual codification of an approved program. Part 147 rulemaking materials are retained by OGWDW, and the Regions will keep the remaining materials related to the program approval by the Agency. All pre-decision materials should be retained in case they need to be included in the docket. Contents of the docket include:

- The complete program revision application (provided by the review team).
- ***Federal Register*** Notice of Completeness (provided by the Region).
- Any documents about the hearing that are not in the ***Federal Register*** notice, e.g., federal actions or formal letters, including a letter of deficiency, if these are part of the record.

Phase III: Review Application and Evaluate for Approval

During the 30-day public comment period, the Regions will receive public comments, hold a public hearing (if requested), and begin to review the program revision. OGWDW will draft Office of Management and Budget (OMB) waivers (as described below).

Public Hearing

For substantial program revisions, 40 CFR Part 145.32(b)(2) requires EPA to issue public notice and provide the opportunity for a public hearing. If a public hearing is requested (even by only one person) the Region is encouraged to hold one.

At least 30 days' advance notice of a hearing is required. To allow the hearing to be held during the public comment period for the Notice of Completeness, a 60 day comment period is recommended. The ***Federal Register*** notice could say that interested parties must request a hearing by day 15, then the Region would be able to provide 30 days notice of the hearing, hold a hearing on day 45, and close the comment period on day 60.

The Regions will determine the logistics of planning the public hearing, cancelling if no one requests it, etc. One option is to plan to hold a hearing, provide information (e.g., the date and location of the hearing) in the ***Federal Register*** Notice of Completeness, and indicate that the hearing will be cancelled if there is no expressed interest.

- Region identifies location and date of public hearing.
- Region provides notice of public hearing in the *Federal Register* and via newspaper advertisements.
- If a hearing is scheduled and there is insufficient public interest, Region cancels hearing.
- Region takes comment at public hearing; includes remarks in responsiveness summary.

Primacy Program Revision Review

Once the program revision is determined to be complete, the review team will begin a thorough review of the application (i.e., to assess its adequacy). Because the regulatory crosswalk should have been completed during the pre-application phase, it is assumed that efforts at this point will focus on the remaining elements of the package.

- Review modified program description, updated Attorney General’s statement, and revised Memorandum of Agreement to assess adequacy and conformance with requirements.
- If necessary, finalize the regulatory crosswalk (created during the pre-application phase).
- NOTE: the Office of General Counsel (OGC) will answer questions and help resolve any issues with the program revisions, but will not review the applications.

OMB Waivers

OGWDW will draft a wholesale, umbrella, or batch OMB waiver from Executive Order 12866 (Regulatory Planning and Review). In an October 12, 1993 memorandum, titled “Guidance for Implementing 12866,” OMB stated that it will waive review of UIC program revision rulemakings. This waiver will need to be in place each quarter that EPA anticipates finalizing a rule. Sufficient lead time (i.e., 3 months) is needed to ensure that the waiver is signed in order to prevent a delay in the rulemaking process.

- OGWDW prepares one-page OMB waiver request.
- OGWDW will set up the waiver with OMB during the first rulemaking and certify that future rulemakings on primacy will be similar, that this is an administrative action, there are no costs to states, and that it does not raise any policy concerns.

Following the 30-day comment period, the Regions review and respond to all public comments and hold public hearings (if they are requested and did not take place during the public comment period). Based on the comments and the results of the application review, the program revision review team will make a determination to approve/not approve the program revision. [40 CFR Part 145.32(b)(3)]

Review Public Comments

The Region collects public comments on the state's program revision, addresses any comments received, and prepares responses. The Region will take the lead on this effort, with support from OGWDW as needed.

- Region creates a public comment table and draft responsiveness summary.
- Region consults OGWDW as needed in drafting responses.
- Responses to any comments submitted at public hearings must be included in the responsiveness summary.
- OGWDW approves the responsiveness summary.

Based on the comments, the review team coordinates with states to revise their applications if needed. Based on the comments and the results of the application review, the Region will determine whether to recommend that the Agency approve or not approve the program revision. Once all issues with a program revision are resolved and there is a "final" application, OGWDW will initiate a rulemaking (see Phase IV, below).

Phase IV: Tier III Rulemaking and Codification in Part 147

OGWDW will simultaneously publish in the *Federal Register* a Proposed Rule and a Direct Final Rule approving or disapproving a state's program revision. [40 CFR Part 145.32(b)(4)] If there is no public objection to approving a state's program revision, the Direct Final Rulemaking under Part 147 will be promulgated. If adverse comment is received, EPA will proceed with the Proposed Rule, evaluate public comments, and publish a final rule.

If a Direct Final Rule is rejected because of comments, EPA proceeds with the Proposed Rule without having to withdraw the Direct Final Rule. Likewise, if no adverse comments are received on the Direct Final Rule, the rule is promulgated and no withdrawal of the proposed rule is necessary.

Prepare Rule Text

- OGWDW drafts *Federal Register* notices for Direct Final Rule with a companion Proposed Rule (including regulation text for Part 147).
 - Direct Final Rule should contain language saying that, unless adverse comments are received in 30 days, the rule will go final on the date indicated in the *Federal Register* notice. [40 CFR Part 145.32(b)(4)]
 - OGWDW will try to include as many states as possible in each rulemaking.
- OGWDW initiates a Tier III rulemaking process to draft a Direct Final Rule with a companion Proposed Rule. The following Offices must provide concurrence letters for the Direct Final Rule with a companion Proposed Rule:
 - Office of General Counsel,

- Office of Enforcement and Compliance Assurance (OECA), and
- Office of Policy (OP).
- OGWDW submits Action Package for signature for the ***Federal Register*** notices of the Direct Final Rule with a companion Proposed Rule. Contents of the Action Package include:
 - An Action Memorandum to be signed by the Assistant Administrator for Water recommending the Administrator approve and sign rulemakings for the state's program revision;
 - Concurrence letters from OGC, OECA, and OP;
 - A ***Federal Register*** notice of the Administrator's decision; and
 - A transmittal memorandum explaining the major issues and their resolution.

Rulemaking Docket

OGWDW will add documents related to the rulemaking to the docket. The documents in the docket include:

- The final program revision application;
- ***Federal Register*** Notice of Direct Final Rule;
- ***Federal Register*** Notice of Proposed Rule; and
- Summary of responses to public comments if EPA proceeds with a Proposed Rule.

Publication of Rules, Public Comment, and Final Rules

OGWDW will publish a Direct Final Rule Notice with a companion Proposed Rule Notice in the ***Federal Register***, along with regulatory text for Part 147. The notice will initiate a comment period of 30 days. [40 CFR Part 145.32(b)(2)]

Where possible, notices of multiple rulemakings may be combined. Decisions regarding combining notices will be case-specific, i.e., only when multiple notices are ready for publication within a few days of each other so that no rulemakings are delayed.

A single adverse comment will not allow EPA to go direct-to-final. However, comments that are out of scope (e.g., about the Class VI rule) may need to be addressed; this would be the Office of General Counsel's decision.

If no adverse comments are received, the Direct Final Rule will be promulgated on the date indicated in the ***Federal Register*** notice.

- OGWDW publishes program revision approval in the ***Federal Register*** and updates to 40 CFR Part 147.

- If the notice approves primacy along with a program revision, the Region notifies the state that primacy has been approved and the state may begin issuing permits for that well class(es).

If adverse comments are received, EPA proceeds with the Proposed Rule, public comments are evaluated and addressed, and a final rulemaking process is initiated.

- OGWDW compiles and reviews public comments and creates a responsiveness summary.
- OGWDW initiates a Tier III rulemaking for the new Final Rule and must receive new concurrence letters from OGC, OECA, and OP.
- OGWDW places new materials in the docket, including:
 - ***Federal Register*** notice of Final Rule and
 - Responsiveness summary.
- OGWDW publishes notice of a new Final Rule approving or disapproving a state's program revision in the ***Federal Register*** (along with updates to 40 CFR Part 147).